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Teleconference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 0110(LJL)

5 LAWRENCE RAY,

6 Defendant.

7 -----x

8  
9 September 4, 2020  
12:00 p.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13  
14 APPEARANCES (via telephone)

15 AUDREY STRAUSS

Acting United States Attorney for the  
Southern District of New York

16 BY: DANIELLE RENEE SASSOON

17 LINDSEY KEENAN

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18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

20 BY: MARNE LYNN LENOX

PEGGY CROSS-GOLDENBERG

21 NEIL PETER KELLY

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(Teleconference established)

THE COURT: Good afternoon. This is Judge Liman.

Who do we have on for the government?

MS. SASSOON: Good afternoon, your Honor. This is Danielle Sassoon for the United States. I'm also joined by Molly Bracewell and Lindsey Keenan, also for the United States, and we're joined by FBI Special Agent Kelly Maguire as well.

THE COURT: Good afternoon, Ms. Sassoon, and good afternoon to others.

For the defense, who is on?

(Pause)

Hello. Do we have Ms. Lenox on?

MS. SASSOON: She was on. Maybe we lost her. This is Peggy Cross-Goldenberg from the Federal Defenders.

THE COURT: Good afternoon, Ms. Cross-Goldenberg. Why don't we take just a moment for Ms. Lenox.

MS. CROSS-GOLDENBERG: She is on but she says that the court had muted her and she can't unmute.

THE COURT: OK. All right.

THE CLERK: I'm sorry, Judge.

Do you know the last four digits of her number? I'm sorry. She may have been muted.

MS. CROSS-GOLDENBERG: Sure. I'm sure she'll -- I just want to make sure which number she called from.

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1 THE CLERK: Give me one moment and I'll unmute her.

2 MS. CROSS-GOLDENBERG: And we also have Neil Kelly  
3 from the Federal Defenders on the line.

4 MR. KELLY: Good afternoon.

5 THE CLERK: Ms. Lenox, can you hear us?

6 MS. LENOX: I can hear perfectly well and I believe  
7 now --

8 THE COURT: Sorry. Is Ms. Lenox on for Mr. Ray?

9 MS. LENOX: Yes. This is Marne Lenox.

10 Can you hear me?

11 THE COURT: We can hear you. Good afternoon, Ms.  
12 Lenox.

13 MS. LENOX: Good afternoon, your Honor.

14 THE COURT: Do we have Mr. Ray on?

15 THE DEFENDANT: Yes, your Honor. Good afternoon, your  
16 Honor.

17 THE COURT: Good afternoon, Mr. Ray.

18 THE DEFENDANT: Thank you.

19 THE COURT: All right. Very well.

20 So I want to make sure first, before we proceed  
21 further, that I've got the consent of all parties to proceed  
22 with this conference telephonically and with me outside of the  
23 district.

24 Ms. Sassoon, do you consent for the government?

25 MS. SASSOON: Yes, your Honor.

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1 THE COURT: And, Ms. Lenox, do you consent?

2 MS. LENOX: Yes, your Honor.

3 THE COURT: And, Mr. Ray, do you consent?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Thank you.

6 Ms. Sassoon, anything else I should ask on that topic  
7 before we go to substance?

8 MS. SASSOON: No, your Honor.

9 THE COURT: OK. Thank you very much.

10 So, I have the defendant's motion for release and for  
11 raising a variety of discovery issues and issues with respect  
12 to the protective order. Let me lay out a couple of things at  
13 the beginning before I first -- I ask to hear from the defense  
14 and then from the government.

15 First of all, I noted that there is a request to  
16 adjourn the date for motions, and I am prepared to adjourn the  
17 date for motions. Ms. Lenox, I'm going to be interested in  
18 your proposal with respect to an adjourned date, but I'm  
19 contemplating moving all of those dates by about four weeks.

20 Second, I note that, in connection with the pandemic  
21 and the issues of the defense having access to Mr. Ray, that  
22 it's going to become very difficult to try this case, as I had  
23 hoped to try it, on January 19. So, I am prepared also to  
24 adjourn the trial date to make sure that there's ample time for  
25 the defense to prepare a defense and to consult with Mr. Ray.

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1           The third thing that I would like to raise touches in  
2 part on the order in which I'd like to hear the matters  
3 addressed today. There is a request for release on bail. One  
4 of the bases for release on bail, under 3142(i), is the  
5 authority to release a defendant when such release is necessary  
6 for the preparation of a defense. To me, from the review of  
7 the papers, that's the principal grounds upon which the defense  
8 is asking for Mr. Ray's as release, and it is a ground that  
9 gives me some concern. That is, I think the defense has raised  
10 some serious issues, some serious concerns about the ability of  
11 the defense to, have access to Mr. Ray and Mr. Ray to have  
12 access to discovery in order for him to prepare a defense.

13           So, for that reason, and because a number of the other  
14 issues touch upon making sure that Mr. Ray has the information  
15 for him to be able to prepare a defense and that counsel has  
16 access to Mr. Ray, I'm going to defer ruling on the motion for  
17 Mr. Ray's release until after I've heard and perhaps decided  
18 issues with respect to the protective order, early disclosure,  
19 Brady, the 12(b) motion, and the like.

20           And, Ms. Sassoon, more to you, I'm going to be very  
21 interested in everything that the government is preparing to do  
22 to make early disclosure of things like witness lists, exhibit  
23 lists and the like in order to facilitate the preparation of a  
24 defense in this case. I'm considering very seriously the  
25 motion for bail, but I'm not going to rule on that today, and

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1 I'm not going to rule on that until after I've heard and  
2 perhaps decided the discovery issues.

3 So, with that as the preface, why don't I hear from  
4 you, Ms. Lenox, or from anybody from the Federal Defenders on  
5 behalf of Mr. Ray, the issues that you would like to raise with  
6 me, and then I'll hear from the government.

7 MS. LENOX: Thank you, your Honor. This is Marne  
8 Lenox, for the record.

9 So most of the issues have already been discussed at  
10 length in our motion and in our reply, so I don't want to beat  
11 a dead horse, but there are a few additional things that I  
12 would like to point out.

13 With respect to the protective order and the sensitive  
14 materials that the government provided as exhibits, the sealed  
15 exhibits for the Court, I just want to make clear that our  
16 request with respect to the protective order and the sensitive  
17 materials is not a very broad one. We're not asking the Court  
18 to engage in a piece-by-piece determination of every single  
19 piece of discovery that has been marked sensitive. In fact,  
20 we're talking about a very small, narrow portion of the  
21 discovery that would be in dispute and that we would anticipate  
22 having to raise with the Court.

23 And what we are proposing is merely a mechanism by  
24 which the Court can dedesignate, remove the sensitive  
25 designation from materials to allow Mr. Ray to review these

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1 materials if he were to remain incarcerated.

2 Yes, absolutely, there is discovery that will stay  
3 under the sensitive designation. We have not moved for all of  
4 the sensitive discovery to become not sensitive for Mr. Ray's  
5 review. Certainly, there are things that the government  
6 provided in its exhibits to the Court under seal that we did  
7 not request the government provide directly to Mr. Ray in our  
8 specific list of materials that we asked be dedesignated. We  
9 understand that videos that display nudity or photographs of  
10 individuals who are nude should be marked sensitive. And for  
11 that reason we would not move the Court, if the Court were to  
12 impose the relief that we request, which is a mechanism to  
13 dedesignate certain sensitive discovery to allow for Mr. Ray's  
14 review, we would not move the Court, and we have not moved the  
15 government, to dedesignate that type of material. I just want  
16 to be very clear on that.

17 The types of materials that we would contemplate  
18 moving the Court, after consultation with the government, are  
19 things like written transcript or handwritten confessions.  
20 These things are exculpatory. This is evidence in black and  
21 white. It does not expose the same sensitivity concerns that  
22 other types of materials do.

23 And, again --

24 THE COURT: Ms. Lenox, let me ask you a couple of  
25 follow-up questions.

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1 MS. LENOX: Yes. Sure.

2 THE COURT: First of all, can you be precise with me,  
3 I know it is in your letter, but exactly the modification that  
4 you would have me make to the protective order?

5 MS. LENOX: Yes. Absolutely. And just so that I can  
6 be as precise as possible, I'm going to pull up our actual  
7 motion --

8 THE COURT: OK.

9 MS. LENOX: -- so that I can find the language.

10 But essentially, without -- before I have a chance to  
11 pull up the order and find the language, essentially the  
12 request is that the Court modify the order to add language that  
13 would allow the parties to avail themselves of Court  
14 intervention if there is a dispute between the parties about  
15 material that has been marked sensitive, and that is so that  
16 Mr. Ray has the ability to review that material.

17 THE COURT: OK. So let me, while you are looking --  
18 we can find the language later -- let me ask you --

19 MS. LENOX: I have it. If your Honor would like the  
20 specific language, I have it. The language is: "If the  
21 government wishes to retain the sensitive designation for  
22 disclosure material, the government shall move the Court within  
23 seven days of the defense's request for dedesignation and make  
24 a particularized showing of why the disclosure material,  
25 subject to defense counsel's request, merits restriction. If



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1 the government fails to establish good cause for the  
2 designation, the disclosure material at issue shall lose its  
3 sensitive designation under the order, and that would allow  
4 Mr. Ray to review that material without counsel present."

5 THE COURT: OK. A second question that I have for you  
6 is that I understand that the government has asked for a change  
7 to the protective order that in my view, and maybe I'm getting  
8 it wrong, but that in my view would permit there to be  
9 disclosure to Mr. Ray of sensitive material but would restrict  
10 the defense from publishing that material on the Internet or  
11 disseminating it to third a third party, which is one of the  
12 purposes for a protective order, as I recall Judge Karas'  
13 opinion, which is one of the lengthier and more better thought  
14 through opinions on this. It arises in the context of public  
15 disclosure.

16 Can you explain to me your objection to the government  
17 proposal?

18 MS. LENOX: Sure. So it's twofold. The first is a  
19 more broad policy objection, which is that the burden should  
20 not be on the defense in the first instance. The burden should  
21 be on the government to show why the sensitive designation is  
22 necessary.

23 I would also argue, your Honor, that Mr. Ray has had  
24 access to a number of the materials that the government has  
25 marked sensitive in some parts of its discovery production

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1 based solely on where the government found the materials. So  
2 while the government has produced to Mr. Ray his emails and  
3 certain email attachments which are all marked not sensitive so  
4 that Mr. Ray may review them while he is incarcerated, some of  
5 those very same materials, because they appear in alleged  
6 victims' or witnesses' devices, are marked sensitive. And so  
7 for that reason, we do not believe that the government has  
8 engaged in a good faith, narrow tailoring of what it has chosen  
9 to designate sensitive and what it has chosen not to designate  
10 sensitive.

11 But what that also means is that Mr. Ray has had  
12 access for the last few months to at least some of the material  
13 that the government deems sensitive. And over that period of  
14 time, there has been absolutely no indication that anyone from  
15 the defense has -- or anyone in general has disseminated that  
16 information publicly. Certainly, there are no allegations that  
17 Mr. Ray has done so or has attempted to do so, nor that any  
18 other individuals related to the case have done so.

19 And so for those reasons the defense does not believe  
20 that the government's proposal is necessary. The --

21 THE COURT: Let me ask you a follow-up question, which  
22 is there other -- does that exhaust your objections to the  
23 government's proposal?

24 MS. LENOX: It does, yes.

25 THE COURT: So let me ask you a follow-up with respect

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1 to that. As I understand it, you're asking for additional  
2 documents to be dedesignated from those that Mr. Ray already  
3 has; is that correct? That's the --

4 MS. LENOX: That's correct.

5 THE COURT: -- whole reason we're ' discussing this.

6 MS. LENOX: Correct.

7 THE COURT: And I am sympathetic, as I indicated  
8 before, to your client's interest in being able to review  
9 additional discovery material that otherwise might be  
10 considered to be sensitive.

11 What would your objection be, if you have one, to the  
12 creation of essentially a third category of protected material,  
13 that is, material that would be -- that could be shared with  
14 Mr. Ray and that he could review outside of the presence of  
15 counsel but that neither counsel nor Mr. Ray could publicize to  
16 third parties or put on the Internet?

17 MS. LENOX: That is an interesting proposal, your  
18 Honor, and it is one that we have not fully discussed or  
19 fleshed out. It's something that I would want to talk to  
20 Mr. Ray about, quite frankly, before entering an order to that  
21 regard or before giving the Court the defense's opinion on  
22 creating such a third category, but it is something that the  
23 defense is willing to contemplate if that is something your  
24 Honor is considering.

25 THE COURT: OK. I'm going to turn to Ms. Sassoon in a

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1 moment on that, but it seems to me that that might be one  
2 sensible way to address the protective order issue.

3 The last question I've got for you on the protective  
4 order is whether today you're asking me to dedesignate any of  
5 the materials that have been submitted to me or whether those  
6 were just exemplars?

7 MS. LENOX: Those were intended as exemplars. To the  
8 extent that the Court is willing to engage in the process of  
9 ordering those materials and consider dedesignating them, I  
10 would happily invite the Court to do so, but our intent today  
11 was not to ask the Court explicitly to dedesignate the  
12 material, and that was not our intent when we filed the motions  
13 originally. The intent was only to ask the Court for  
14 permission to come to the Court when such disputes arise. And  
15 to the extent that we provided the Court with the materials  
16 under seal, it was only done so in response to the government's  
17 request to do so so that the Court had a fair and accurate  
18 representation of exactly what it was that the defense was  
19 requesting.

20 So, while I certainly was not intending for the Court  
21 to review those materials and make a determination based on  
22 what we've provided, I certainly would not discourage the Court  
23 from doing so, if your Honor is so inclined.

24 THE COURT: I actually do have one other question for  
25 you which I would invite an answer, if you feel comfortable.

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1           It was clear to me, from reviewing the materials that  
2           were submitted to me, that are aspects of this case that I  
3           don't completely understand, including the victim,  
4           quote-unquote, confessions. It seems to me that the parties  
5           have a very different view as to the significance of those  
6           confessions. You're not obligated to give me a defense  
7           perspective on the, quote-unquote, confessions, but if you are  
8           comfortable, it would be helpful to me.

9           MS. LENOX: The defense's perspective is that those  
10          confessions, which we provided in part of sampling for the  
11          Court, that those confessions are exemplars of the individuals,  
12          the alleged victims in this case, confessing to harming,  
13          poisoning Mr. Ray, to causing him physical harm, to causing  
14          damage to his property. There are numerous confessions of this  
15          type where these individuals have said that they have been  
16          plotting against Mr. Ray with other individuals for a number of  
17          years and laying out exactly how they have done so in great  
18          detail. And so, to our mind, as far as the defense is  
19          concerned, these confessions are exculpatory Brady material.

20          THE COURT: All right. Let me turn to Ms. Sassoon,  
21          and then, Ms. Lenox, I'll turn back to you on the other  
22          subjects.

23          Ms. Sassoon, can you hear me?

24          MS. SASSOON: Yes, your Honor. I have --

25          THE COURT: I'll hear from you on anything you want to

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1 say with respect to the protective order, but what is your --  
2 two questions: First, what is your objection to the  
3 defendant's proposed language? And then, second, would you  
4 object to the creation of a third category that would permit  
5 you to share more material with Mr. Ray for him to review in  
6 his privacy without it being disseminated more broadly?

7 MS. SASSOON: Your Honor, with respect to your latter  
8 question, the government considers that basically in line with  
9 what we are proposing, and we would welcome it. As I'll  
10 discuss, we are making an effort on a number of fronts to  
11 provide access to discovery. We would like to dedesignate  
12 certain material, and I can discuss that in more detail, but we  
13 are unable and unwilling to do that without the assurance that  
14 this will not be posted and disseminated and without an  
15 agreement that everyone is on that same page. And that was the  
16 spirit of our proposal to defense counsel. And to the extent  
17 that we categorize that as a third category of discovery, I  
18 think that achieves the same purpose and we would welcome that.

19 THE COURT: OK. What about the first question I  
20 asked, the defendant's language?

21 MS. SASSOON: Yes. With respect to that question, I  
22 would like to take a step back. There are a few things I want  
23 to raise with respect to the context here. One is a  
24 significant development in terms of what is going on at the MCC  
25 with respect to COVID-19. We received information this morning

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1 that legal in-person visits are scheduled to resume at the MCC  
2 beginning on September 21st, and if that in fact happens, that  
3 obviously changes the landscape here. It's our position that  
4 all of the defense requests should be denied for the reasons in  
5 our letter, but all the more so if there are now in-person  
6 legal visits that allow for the review of sensitive discovery  
7 and in-person visits with the defendant. It also has  
8 implications for the bail application, for the exhibit  
9 requests, for the protective order modification. And so, at  
10 the very least, the government would urge the Court to defer on  
11 making drastic expansions of some of the government's existing  
12 obligation in light of the fact that we are hopefully on track  
13 to resuming the types of visits and discovery review that  
14 existed before the pandemic.

15 THE COURT: OK. Let me interrupt you for a second,  
16 Ms. Sassoon.

17 Just so that you don't get your expectations up, you  
18 know my views, because I've written them, about whether it is  
19 sufficient to address the defense's concerns with respect to  
20 the review of materials to say the defendant can review the  
21 materials in the presence of counsel. I don't believe that  
22 that is a sufficient answer, and so --

23 MS. SASSOON: So I --

24 THE COURT: That should be clear. That doesn't mean  
25 that I'm going to order a drastic change, in your words, but

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1 just so that the defense doesn't have to argue that point.

2 I've written on that and those are my views.

3 MS. SASSOON: Yes, your Honor. I'm aware of those  
4 views, and the government is certainly not suggesting that that  
5 alone is sufficient and we are otherwise throwing up our hands  
6 and not doing -- not taking significant steps to increase  
7 access to discovery in other ways, and so I'll turn to that  
8 now.

9 With respect to the protective order, as it exists  
10 right now, there is a mechanism for dedesignating discovery and  
11 that's in paragraph 8, which says: "At defense counsel's  
12 request, the government shall undertake a good faith review of  
13 any sensitive disclosure material designations and shall advise  
14 counsel for the undersigned defendant as to whether any such  
15 documents may be released from the protective order."

16 And that is what the government has been doing, and  
17 I'd like to walk through that a little bit so that the Court  
18 can understand why the mechanism defense counsel is suggesting  
19 is not warranted at this time.

20 THE COURT: But I also would like to hear from you as  
21 to what the objection is to their mechanism, because as a  
22 general matter, protective orders should be as least  
23 restrictive as need be to accomplish their objectives.

24 MS. SASSOON: Yes, your Honor.

25 For one, as defense counsel sets out in their letter,



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1 the burden is on them at this point to set out a compelling  
2 justification. And what they're asking for here is a regime  
3 where if the government -- and I'm quoting from their letter --  
4 "If the government wishes to retain the sensitive designation  
5 for disclosure material, the government shall move the Court  
6 within seven days of the request for dedesignation and make a  
7 particularized showing of why the disclosure material merits  
8 restriction."

9 And defense counsel has said orally today, you know,  
10 we don't intend to abuse this, we don't intend to make such  
11 sweeping requests. But nothing about their proposal limits  
12 them from subjecting the government to a writing exercise with  
13 respect to every single piece of sensitive discovery which, it  
14 is the government's position, they have yet to demonstrate an  
15 improper designation and where we are poised to institute a new  
16 potential provision of the protective order that would enable  
17 the government to dedesignate large amounts of sensitive  
18 discovery, which we are prepared to do, without having to go  
19 through this written exercise for every piece of sensitive  
20 discovery.

21 And I'd like to set out what we are prepared to do in  
22 the event that the Court creates this third category of  
23 disclosure material. Now --

24 THE COURT: Ms. Sassoon, let me interrupt you before  
25 you answer that question.

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1 Under the protective order as it's currently drafted,  
2 do you have a view as to whether if the defense disagrees with  
3 the government designation of sensitive material, they could in  
4 any event bring that to my attention and ask for me to make a  
5 determination as to whether it should be treated as  
6 confidential?

7 MS. SASSOON: So that is --

8 THE COURT: That it is sensitive?

9 MS. SASSOON: That is certainly something that is  
10 available to them. I don't think that we will necessarily get  
11 to that point, given the steps I would like to describe to the  
12 Court about what the government is in the process of doing.  
13 But in any event, that's not what they're asking for here.  
14 They're saying --

15 THE COURT: No. I understand that's not what they're  
16 asking for here. I'm just asking for your view on the form of  
17 protective order and whether under the protective order the  
18 government would have any objection to the defense making a  
19 motion to me and submitting the material and saying the  
20 following material should not be designated as sensitive, the  
21 government hasn't justified its treatment, and then putting the  
22 burden on you in a response to justify what material should be  
23 treated as sensitive.

24 MS. SASSOON: Yes. Of course, the government does not  
25 have the final word and there would always be recourse to the

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1 Court. But, again, I don't think there is anything established  
2 at this point to demonstrate that the government and the  
3 defense in the first instance cannot resolve these  
4 disagreements. And if -- the government is very clear that  
5 with respect to the limited requests that have been made so  
6 far, we are entertaining those requests and being very  
7 reasonable in our response. For example, with respect to some  
8 of these written confessions and these transcripts, the  
9 government indicated that it is prepared to dedesignate some of  
10 those materials as long as there is some protection afforded  
11 with respect to dissemination. Now, to be sure, those  
12 materials are not pornographic content, but they are  
13 nonetheless sensitive and would be extremely damaging if  
14 disseminated.

15 So, the government recognizes that there are different  
16 tiers of material; that there is the most highly sensitive  
17 category of sensitive material that would include sexually  
18 graphic --

19 THE COURT: Yes. I mean, listen, we don't need to  
20 disclose what's in the highly sensitive category. I don't need  
21 the government's perspective on what is highly sensitive in a  
22 way that would put the defense in an awkward position.

23 MS. SASSOON: Your Honor, I would like to point out,  
24 the defense, in just speaking, said that they may request the  
25 government to dedesignate material and that they did not ask us

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1 to dedesignate material that included nudity, and that's simply  
2 untrue. For example, the request included a request to  
3 dedesignate Larry Ray's phones in their entirety. Those phones  
4 include sensitive materials, including nudity. And so when the  
5 government responded and said we will do a more tailored  
6 responsiveness review for those phones, the materials that they  
7 submitted to the Court from his phones, we are perfectly  
8 prepared to dedesignate those as sensitive and to provide those  
9 to Mr. Ray.

10 So there is really no ripe conflict here about what is  
11 marked sensitive. The government, again, with respect to the  
12 request that has already been made, has taken the sensible  
13 position that the defense is not disputing at this point,  
14 especially because the government has both agreed to review the  
15 phones and agreed to produce certain transcripts as long as  
16 there is a third category of material recognized by the  
17 protective order.

18 With respect to the exhibits that the defense  
19 submitted, apart from Mr. Ray's phones, none of those requests  
20 have yet been submitted to the government. And we are  
21 perfectly prepared to assess those requests and have a  
22 discussion with defense counsel about which of those materials  
23 can be dedesignated. Some of them, although they're not  
24 videos, still contain very sensitive information about mental  
25 health problems, about therapies, about sexual activity. And

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1 while the defense has talked a lot about these, quote-unquote,  
2 confessions, and the government is prepared to dedesignate  
3 those with this third category of protected material in the  
4 protective order, those documents are clearly sensitive on some  
5 level and can't just be disseminated without a modification to  
6 the protective order.

7 And so the reason why I'm getting into such detail is  
8 simply to illustrate to the Court that the government is  
9 prepared to dedesignate material, that there is no actual ripe  
10 dispute about an improper sensitive designation that would  
11 justify this modification to the protective order that has the  
12 potential to be extremely -- to create this new obligation is  
13 simply uncalled for at this point in the case, where the  
14 government is already entertaining these requests,  
15 dedesignating things, prepared to dedesignate additional things  
16 with that modification to the protective order. There is no  
17 basis at this point, whenever there is a dispute, to require  
18 the government to put in a written submission given the volume  
19 of data in this case. That's not tenable and it is not  
20 warranted.

21 THE COURT: Ms. Sassoon, let me ask you a follow-up  
22 question about some of the material the defense submitted to  
23 me -- actually, about two categories. One is the material that  
24 you indicated that has psychiatric, medical, or sexual history  
25 information in it, does the government have any objection to

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1 providing that material to Mr. Ray to review in the privacy of  
2 his cell as long as it is not disseminated publicly? And it  
3 seems to me that's very important defense information.

4 MS. SASSOON: Yes. It's hard for me to make, you  
5 know, a sweeping statement about all the material, and each  
6 document is distinct. With respect to the, quote-unquote,  
7 confession, that is a category that in general the government  
8 is prepared to -- is prepared to produce dedesignated with a  
9 protection against dissemination. With respect to some of the  
10 other documents that talk about mental health and personal  
11 details related to someone's sexual life, that's something a  
12 little different that I would have to discuss with the team and  
13 my supervisor before committing to a position on that, but it's  
14 certainly something we would consider.

15 THE COURT: OK. There's also videos of the  
16 confessions. Is there any basis for withholding those from  
17 Mr. Ray, as long as it is not going to be publicly  
18 disseminated?

19 MS. SASSOON: Videos that don't show sexual activity,  
20 physical abuse, or extreme verbal abuse leading to emotional  
21 breakdown I think can be provided.

22 THE COURT: That last category you could drive a truck  
23 through in terms of people having different views as to what  
24 constitutes -- what would fall within that category.

25 MS. SASSOON: Being very familiar with the evidence,

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1 there are plenty of videos that constitute confessions that we  
2 would be willing to produce. There are some that depict  
3 victims in particularly vulnerable, humiliating states that I  
4 think would potentially still be sensitive and --

5 THE COURT: Aren't these all confessions that are  
6 videos that were taken, you know, either by Mr. Ray or in  
7 Mr. Ray's presence?

8 MS. SASSOON: Yes, your Honor.

9 THE COURT: So what interest would be compromised by  
10 permitting Mr. Ray to, and Mr. Ray alone, to look at them in  
11 the privacy of his cell as long as they are not disseminated?

12 MS. SASSOON: Your Honor, the defendant was also  
13 present and took the videos of the sexually graphic content.  
14 That alone is not a basis for saying that he is entitled to  
15 copies of materials that are demeaning of the victims and from  
16 which he takes pleasure. And while there will be a  
17 modification to protect dissemination, it is not foolproof and  
18 it is still highly sensitive. So I don't think the fact that  
19 he was present or possessed these things at one point in time  
20 is dispositive.

21 THE COURT: All right. Well, there may not be a ripe  
22 issue right now, but it looks like there may be an issue coming  
23 down the pike and that it may become ripe for my resolution.

24 Is there more on the protective order, Ms. Sassoon?  
25 Then I am going to turn back to Ms. Lenox on the protective

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1 order and we can march through these other issues.

2 MS. SASSOON: No. I would just emphasize it is the  
3 government's position that there is no need for Court  
4 intervention at this time if we do all agree on that third  
5 category modification, which would open the door for the  
6 government to make substantial dedesignations, and I'm  
7 committing to the Court that that is what we are prepared to  
8 do, even if I'm not saying wholesale that every video is going  
9 to be produced.

10 THE COURT: Ms. Lenox, why isn't it sufficient for you  
11 to bring to my attention the documents in discovery that you  
12 think should be dedesignated? You could perhaps even bring  
13 exemplars to my attention, rather than putting the burden on  
14 the government, within seven days to arrange a request by you  
15 to make a particularized showing. Aren't you in a better  
16 position to raise them with the Court?

17 MS. LENOX: Yes. So my response to that is it is the  
18 government's burden generally to show good cause for all of its  
19 sensitive designations at the outset. Now, in this case we  
20 have entered into a protective order, which I understand shifts  
21 the burden in terms of modification of the order. But it  
22 should not shift the burden in terms of who has to establish  
23 good cause for the sensitive designation.

24 So, if there is a dispute about the materials, the  
25 burden should remain on the government to show why their



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1 sensitive designation should remain as such. This is  
2 especially true in a case, like this one, where the government  
3 has designated more than 95 percent of its entire discovery  
4 production as sensitive. Given that, the burden should be on  
5 the government.

6 Now, that said, the defense -- the reading of the  
7 protective order does not allow for on its face Court  
8 intervention. As Ms. Sassoon read from paragraph 8, the way to  
9 resolve the dispute would be for the defense to ask for  
10 dedesignation from the government, which the defense has done  
11 on a number of occasions. The result of that has been, despite  
12 numerous conversations, the most recent one being on July 24th,  
13 that while the government has said we will take this under  
14 advisement, they have dedesignated and redacted -- so they have  
15 dedesignated and redacted 30 draft transcripts of phone calls  
16 between an alleged victim and a bank. That is what has come of  
17 the paragraph 8 that the government relies on to say that there  
18 is already a mechanism for resolving the disputes.

19 Now, if the government is of the opinion that, based  
20 on the order, the defense may move the Court for dedesignation  
21 but the burden ultimately remains on the government to show  
22 good cause in the event that the defense does move for  
23 dedesignation, I would be fine with that. The face of the  
24 order as it stands does not appear to allow for that mechanism.

25 So if your Honor --

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1           THE COURT: OK. Let me interrupt you, Ms. Lenox,  
2 because I'm prepared to rule on this and then I want to move on  
3 to the other issues.

4           With respect to the issue of the protective order, my  
5 understanding of the protective order has always been that  
6 regardless of whether it is written in there, that the defense  
7 could approach the Court and move the Court for dedesignation  
8 of sensitive materials on the grounds that the government had  
9 improperly designated them. Then the burden would be on the  
10 government to support the designation of the materials as  
11 sensitive.

12           If that's not clear, it should be made clear. So with  
13 respect to that, I'm going to order that the parties meet and  
14 confer to draft language to make it clear that the defense can  
15 move the Court if it believes that the government has  
16 improperly designated materials, that the burden will always,  
17 of course, be on the government to support its designation of  
18 the materials. Then that the government should respond to a  
19 request with respect to dedesignation within seven days of the  
20 request being made, absent further Court order.

21           So if, for example, Ms. Sassoon, Ms. Lenox was to, you  
22 know, dump a huge number of documents on the Court and you need  
23 more than seven days to answer, you'll just tell me that you  
24 need more than seven days to answer, and you'll support the  
25 reason why you need more than seven days and you'll make that

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1 application to me.

2 My hope is that, Ms. Lenox, you will not give me every  
3 piece of paper; that this can be done in a way where, if you  
4 are not able to reach agreement, you give me exemplars and then  
5 I make a ruling. So that's with respect to the request on  
6 dedesignation.

7 I'm also going to ask the parties to meet and confer  
8 with respect to the creation of a third category, and that's  
9 merely in the interest of the defense, because I'm not going to  
10 be able to distinguish between documents for Mr. Ray to review  
11 in the privacy of his cell and documents that he reviews in the  
12 privacy of his cell can also be disseminated more generally,  
13 that may inure unfavorably to the defense. So that's where I  
14 remember come out with respect to the protective order.

15 Why don't we move to the next issue, which I think is  
16 maybe the 12(b)(4) argument with respect to the motions.

17 Do you want to address that, Ms. Lenox?

18 MS. LENOX: Your Honor, I don't have much to say about  
19 that beyond what's already written in the papers. I would just  
20 note that in order for us to make fulsome arguments in our  
21 motion, and in order for us to present motions in the most  
22 strategic way possible and provide effective assistance of  
23 counsel for Mr. Ray with respect to the motions, we need to be  
24 able to review discovery with Mr. Ray. And the mere fact that  
25 Mr. Ray was sent search warrant applications months ago,

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1 without the benefit of actually being able to sit down with  
2 counsel and review those in conjunction with the vast amount of  
3 discovery that is related to those and that has come of the  
4 execution of those warrants, it is quite difficult if not  
5 impossible to effectively represent Mr. Ray with respect to  
6 motion practice, and so that is why we are making the request  
7 that we are.

8 THE COURT: All right. Well, I've got a couple of  
9 questions for you, and then I'll have some questions for  
10 Ms. Sassoon.

11 But to you, I understand that the government has told  
12 you that it is planning to offer evidence that was obtained  
13 pursuant to each and every one of the warrants that it obtained  
14 in connection with this case. What more information  
15 specifically do you need to be able to make a motion with  
16 respect to each of those warrants on each of those searches?

17 MS. LENOX: Your Honor, it's not about a need for more  
18 information. It's about a need to be able to keep  
19 (unintelligible) with Mr. Ray and have him review the materials  
20 that were gathered as a result of the execution of those  
21 warrants. So, for instance, one way to challenge a search  
22 warrant is through a Franks motion. And in a Franks motion,  
23 the way to challenge the search warrant would be to say that  
24 there is evidence that the agents knew about in advance of the  
25 execution of the warrant that they should have included in

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1 their application of the warrant because it could change the  
2 magistrate's view of the probable cause analysis.

3 Now, in order to be able to make that argument  
4 compellingly, we need to be able to review the discovery with  
5 Mr. Ray and have the benefit of him being able to point us to  
6 certain documents or videos or audio files in the discovery  
7 that the government may have known about, or have had reason to  
8 know about, at the time that they made their warrant  
9 application. So without his help and his ability to review  
10 that information in conjunction with the warrants and in  
11 consultation with us, it's hard for us to determine a good  
12 strategy for motion practice here.

13 THE COURT: OK. You gave me that as one example. Are  
14 there other examples of reasons why you need the actual  
15 evidence that the government is planning to offer in order to  
16 make a motion to suppress evidence?

17 MS. LENOX: I think it's largely that, your Honor. It  
18 is the notion that we need to be able to review the language --  
19 or, I'm sorry, we need to be able to review the materials with  
20 Mr. Ray. And the plain language of the rule allows for it and  
21 requires that we receive notice of what they intend to use as  
22 evidence in their case in chief. So, based on that, we believe  
23 that the government should provide us with their proposed  
24 exhibit list or a better sense of more narrowly tailored  
25 discovery that they intend to introduce at trial.

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1 THE COURT: OK. Let me turn to you, Ms. Sassoon.

2 First, with respect to the Franks type argument, I  
3 know that that does not read exactly on the rule, but what's  
4 your answer to that?

5 MS. SASSOON: My understanding of that argument, your  
6 Honor, it's really an argument for more time rather than for  
7 the material they're requesting under Rule 12, particularly  
8 because if there are certain documents that would be relevant  
9 to a Franks hearing, that has little to do with the exhibits  
10 the government intends to use at trial. In fact, those  
11 probably would be the exhibits the government intends to use at  
12 trial.

13 THE COURT: Right.

14 MS. SASSOON: So that arguments seems entirely  
15 divorced from the Rule 12 request and instead be a request for  
16 an adjournment that has nothing to do with Rule 12.

17 In terms of the ability to review discovery, or to  
18 comply with Rule 12, we provided notice about the fact that we  
19 intend to use evidence from each of the search warrants, and  
20 our responsiveness reports give an idea what might be  
21 potentially be exhibits at trial, although we obviously have  
22 not narrowed it down to a specific exhibit list. It is going  
23 to be confined to that universe of material, which is about one  
24 percent of the overall extracted data. So, for those reasons  
25 and those in our letter, we believe we've complied with Rule

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12.

THE COURT: Ms. Sassoon, help me. Were the warrants executed at different times such that there might be information that would have been obtained through the execution of one warrant that would inform the government's knowledge at the time that it swore out an affidavit for another warrant?

MS. SASSOON: Yes, your Honor. The premises search warrant was executed on the day of Mr. Ray's arrest, and it was sworn out shortly before that. There were other warrants that were sworn out during the covert investigation, including his emails and iCloud accounts.

THE COURT: OK. The other question that I've got for you is -- my notes say that there are 43 devices but there are a lot of numbers that have been bandied about in terms of devices, phones, and the like. This is not quite a 12(b) issue, but it is an issue that I think I've got authority over in terms of my trial management.

Are you able to confine at this point the evidence that the government is intending to offer to particular of those 43 devices? Are you really going to offer evidence from every single device that you've had access to, every phone of a particular person that you've had access to? And can't you limit it in some way so that it would facilitate the preparation of the defense in this case?

MS. SASSOON: Your Honor, the government's processes

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1 proceeded in stages. So after the arrest, we had 230 devices.  
2 Over the past few months, we narrowed it down to 54, and  
3 subsequent to that we narrowed it down to about 40 that were  
4 actually extracted. And then among those, there are some for  
5 which we produced no responsiveness reports, some that we  
6 indicated are only potentially probative because of who they  
7 belong to. So perhaps as we shift from discovery production to  
8 trial preparation, we'll be narrowing it down even further.

9 But, for example, some of these devices for which  
10 we've produced responsiveness reports to the defense, the  
11 entire responsiveness report is about one megabyte of data.  
12 That's very little data. You know, others it's several  
13 gigabytes, but there are several that are in the megabyte. So  
14 while we haven't necessarily said these are the only devices  
15 we're going to introduce, we've narrowed very substantially the  
16 amount of evidence we might use from each particular device and  
17 also identified about nine devices that would only be used for  
18 the purpose of establishing that it was taken from a particular  
19 person.

20 So we have incrementally narrowed this substantially,  
21 and I imagine that will happen more over time, but I think,  
22 standing here today, for each month of this case we've made  
23 strides towards narrowing.

24 THE COURT: OK. Let me turn back to you, Ms. Lenox,  
25 and tell you what I'm thinking and then ask for your reaction



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1 to it.

2 I don't think on the law your motion under 12(b)(4) is  
3 well founded. Under the case law that I've reviewed and that  
4 has been provided to me, I find the cases convincing that say  
5 that the government's obligation is satisfied when the  
6 government indicates to you sufficient information for you to  
7 be able to make your motions. And I think that with respect to  
8 the 12(b)(4) issue, that is sufficiently addressed through two  
9 things. One is to give you an adjournment for the date to file  
10 motions. And, second, if it turns out that there is a motion  
11 that you were not able to make because of information that was  
12 turned over late or was a needle in a haystack, you can always  
13 apply for relief from the effect of the scheduling order for  
14 good cause. So that's with respect to motions.

15 The way in which I understood your argument is more  
16 towards trial preparation. And I do think that there is a  
17 serious issue in terms of a trial of this complexity with this  
18 many documents about how early you get the government's exhibit  
19 list. And so one of the things that I'm contemplating as a  
20 supplement is an earlier order of an exhibit list. Ms. Sassoon  
21 has indicated that the government is considering providing the  
22 exhibit list more than 33 days -- I'm sorry, more than three  
23 weeks in advance of trial, and I may invite some briefing with  
24 respect to making that quite a bit earlier, something closer to  
25 what's been done in other cases, which is two months before

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1 trial.

2           Wouldn't your objectives be satisfied by early  
3 disclosure of the exhibit list and by what I've indicated with  
4 respect to motions?

5           MS. LENOX: Yes. The only thing I would add is that  
6 our review of discovery with Mr. Ray has been hampered  
7 obviously by COVID and the restrictions imposed by COVID. And  
8 I also, you know -- I just want to make clear that while the  
9 government has substantially narrowed the universe of evidence  
10 that is relevant for trial and while we have all of the  
11 discovery that they have, I'm assuming, in their possession to  
12 date, we are still -- we are still somewhat restrained with  
13 respect to motion practice.

14           That said, I do think that extending the motions'  
15 deadline and providing an exhibit list well in advance of the  
16 three weeks that the government had initially suggested could  
17 be adequate relief here. If your Honor is considering two  
18 months before the trial date, I would say that's -- that's  
19 perhaps -- it would be nice to get it a little bit earlier than  
20 two months before the trial date, but certainly two months  
21 before the trial date is far more reasonable than the three  
22 weeks requested by the government.

23           THE COURT: Ms. Sassoon, I'm going to ask for briefing  
24 with respect to that. I realize that that had not been raised  
25 before, and you will want to consult, the defense will want to

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1 think about it, so that you don't need to respond to that, but  
2 I'm going to ask for briefing with respect to that.

3 And with respect to --

4 MS. SASSOON: Your Honor, let me just say --

5 THE COURT: Go ahead.

6 MS. SASSOON: We will brief this. But if the motion  
7 schedule is getting adjourned and if the trial date is getting  
8 adjourned, respectfully, even briefing this issue seems  
9 premature given that we don't know what the state of the world  
10 will be three months before trial, four months before trial if  
11 we're looking at a trial date that's in the spring or summer.  
12 And while the defense came up with one case where there were  
13 exhibits produced two months before trial because of case  
14 issues, as far as I know -- and this is obviously something  
15 we'll look into more before briefing, but even in very complex  
16 security cases, two months for exhibits is an extremely,  
17 extremely aggressive deadline for the government. And as to  
18 COVID, there would be no brick spaces for it, and we just don't  
19 know what the state of the world will be when we have this  
20 trial date. So, of course, if your Honor is interested in  
21 briefing, we will brief the issue, but given that we are  
22 several months from the existing trial date and even farther  
23 from a potentially adjourned trial date, this seems premature.

24 THE COURT: OK. With respect to the early  
25 identification of Brady, that's something that I will consider

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1 in connection with thinking about the question of an early  
2 identification of a witness list unless there is something --  
3 anything further that, Ms. Lenox or Ms. Sassoon, you want to  
4 add with respect to that issue.

5 Ms. Lenox?

6 MS. LENOX: Nothing further. Thank you.

7 THE COURT: Ms. Sassoon?

8 MS. SASSOON: Your Honor, when you say -- yes, I'm  
9 sorry. This is Danielle Sassoon speaking.

10 When you say "early identification of Brady," do you  
11 mean Giglio, or am I misunderstanding your Honor?

12 THE COURT: Yeah. I think the question was both with  
13 respect to Brady and with respect to Giglio. I understand that  
14 there is no constitutional right that the cases have  
15 interpreted toward for the government to identify Brady, or  
16 highlight the Brady. I also understand that the result might  
17 be different if there was bad faith on the part of the  
18 government or hiding a needle in a haystack. On the other  
19 hand, one of the things I need to consider, as I mentioned at  
20 the very beginning, is making sure that in an environment as  
21 uncertain as the COVID environment and with the volume of  
22 materials here, that there is adequate time to prepare a  
23 defense. And so in connection with that, I'm thinking about  
24 the Brady issue. There obviously also is the Giglio issue, and  
25 I have not thought through that.

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(Pause)

I may ask for more briefing -- actually, in fact, I probably will ask for briefing with respect to early identification of Giglio and Brady as well as early identification of an exhibit list at the same time.

I think that's just leaves --

MS. SASSOON: Your Honor.

THE COURT: Go ahead, Ms. Sassoon.

MS. SASSOON: Yes. This is Danielle Sassoon speaking.

I just want to clarify, because it's the government's position that we have identified Brady by producing the discovery, and there would be no subsequent Brady deadline in advance of trial. There is no -- typically in a trial, there is a Giglio deadline, there is a 3500 material deadline, there is an exhibits deadline, but there is no independent Brady deadline on the understanding that the government has its obligations and it's fulfilling them on a continuing basis. And so I'm not sure if what your Honor is suggesting is that there is an implied additional obligation to identify Brady within the discovery, as the defense is asking for and which we oppose, or if your Honor has yet to reach that issue?

THE COURT: Yes. I'm going to ask for further briefing with respect to that issue. There is no obligation on the part of the government as things currently stand to point out the Brady material within the discovery, but I understand

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1 that's something that the defense is asking for. And I believe  
2 that I've got the authority to order that even if the -- even  
3 if it would not violate the Constitution for me to fail to  
4 order that. And I understand quite well the practice in most  
5 cases in this district, but that doesn't prevent me based upon  
6 the particular facts of this case in terms of coming to a  
7 different conclusion.

8 I think the issue with respect to the laptop is  
9 premature unless there is anything further to raise with  
10 respect to that.

11 MS. LENOX: This is Marne Lenox.

12 That's fine. Thank you.

13 THE COURT: OK. Ms. Sassoon, anything further to  
14 raise with respect to that?

15 MS. SASSOON: No, your Honor.

16 THE COURT: OK. So, Ms. Lenox, how much more time do  
17 you need for motions?

18 MS. LENOX: I would ask for 45 days from the date that  
19 was originally set, which I believe was September 14th. So  
20 that would bring us to, I believe, October 29th.

21 THE COURT: Ms. Sassoon, do you have a view on that?

22 MS. SASSOON: No, your Honor. But the government does  
23 have the view that to the extent there is going to be briefing  
24 about exhibits and Brady and the like, it should be at the very  
25 least after motions are decided, given that we'll have a sense

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1 of the admissible evidence and the trial date.

2 THE COURT: Hold on for a second.

3 (Pause)

4 I am just looking at the -- Ms. Lenox, do you have the  
5 dates that I previously set for motions?

6 MS. LENOX: Yes. I can pull those up in just a  
7 moment, your Honor. I don't know if Ms. Sassoon has easier or  
8 faster access.

9 I believe Mr. Ray's motions were due September 14th.  
10 I have the -- the government's response I believe was due  
11 October 5th, and Mr. Ray's reply was due on October 16th.

12 Is that correct, Ms. Sassoon?

13 (Pause)

14 THE COURT: That's good enough.

15 Ms. Sassoon, how much time do you need, do you want  
16 for (inaudible) And I would want, in connection with the  
17 motions on the 29th, you will brief the discovery issues in  
18 terms of early discovery, disclosure of a witness list,  
19 including the discovery issues with respect to early disclosure  
20 of the witness list and early disclosure of Brady or Giglio.

21 I hear your point, Ms. Sassoon, but I'm going to --  
22 it's more efficient for me to get all of the briefing at once.

23 So if that's going to be in the defense briefing on  
24 October 29th, how much time do you want for a response?

25 MS. SASSOON: So we initially had three weeks to

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1 respond, but given that there will be this whole other category  
2 of briefing to respond to, we'd ask for a month.

3 THE COURT: That's reasonable.

4 That puts us -- I have October 29th as a Thursday.  
5 Why don't we make it on the Friday, which is October 30th, for  
6 the defense motions.

7 And then I don't want to make the government response  
8 due the day after Thanksgiving, so why don't we make it  
9 November 30th for the government response? Does that work for  
10 you, Ms. Sassoon?

11 MS. SASSOON: Thank you, your Honor.

12 THE COURT: OK. And then how about two weeks after  
13 that for any reply?

14 MS. LENOX: I would ask for three weeks, just given  
15 the expansion of the briefing issues.

16 Your Honor, our deadline is effectively three weeks,  
17 given that it is over the Thanksgiving holiday that we are  
18 going to be responding to the briefing.

19 THE COURT: Yes. Why don't we say the reply is due  
20 December 14, and I'll have a hearing on December 18th.

21 Does that work for the parties?

22 MS. LENOX: Yes, your Honor.

23 MS. SASSOON: Yes, your Honor.

24 THE COURT: OK. That leaves the question of trial  
25 date, and I'm going to adjourn the trial.



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1           Here's my issue, and I'll ask each side for their  
2 suggestions. I would like to set a firm trial date for this  
3 either in March or April or perhaps as late as May. In order  
4 to make sure that I've got a jury, I need to have a firm trial  
5 date. I can set one now for March, if the parties are prepared  
6 for March. Otherwise, I can set a tentative trial date for  
7 April, and we can revisit that depending on what the conditions  
8 are at the MCC and whether it opens up and the like.

9           What's the -- Ms. Lenox, what's your preference?

10          MS. LENOX: I have a strong preference for the latter,  
11 your Honor. I think given the current circumstances and the  
12 unknowns right now, setting a tentative trial date in April  
13 makes sense.

14          THE COURT: Ms. Sassoon, do you have a view?

15          MS. SASSOON: Yes, your Honor. The government would  
16 suggest a trial date in May. Right now our briefing won't be  
17 done until December. The Court may not rule on the motions  
18 until January. If we're putting together early exhibits and we  
19 had a March trial date, our exhibits would be due in January,  
20 which seems ambitious.

21          THE COURT: Yes. All of that is sensible.

22          MS. SASSOON: Taking all of that into consideration.

23          THE COURT: How about May 10 as a trial date? Does  
24 that work for the defense?

25          MS. LENOX: I believe so, your Honor.

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1 THE COURT: For the government?

2 MS. SASSOON: Yes, your Honor.

3 THE COURT: OK. All right. So we'll adjourn the  
4 trial date to May 10th.

5 So I think the last thing to do is exclusion of time  
6 under the Speedy Trial Act.

7 Does the government have the application?

8 MS. SASSOON: Yes, your Honor.

9 The government would move to exclude time between now  
10 and the scheduled trial date in the interest of justice so that  
11 the parties can brief motions, the Court can decide them, the  
12 parties can prepare for trial and continue to review discovery.

13 THE COURT: What is the defense's position.

14 MS. LENOX: No objection from the defense.

15 THE COURT: OK. So the Court will exclude trial --  
16 will exclude -- let me start again.

17 The Court will exclude time under the Speedy Trial  
18 Act, 18 U.S.C. 3161(h)(1)(A), from today until the date of  
19 trial, May 10th. I make the finding that the interests of  
20 justice exceed the interests of the public and the defense in a  
21 speedy trial in that the time from today until the time for  
22 trial can be used to complete the process of discovery, to make  
23 motions, for the parties to have discussions among themselves,  
24 and for the parties to prepare for trial.

25 Ms. Sassoon, is there anything further I should say on

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1 that front?

2 MS. SASSOON: No. Thank you, your Honor.

3 THE COURT: OK. Anything further, Ms. Sassoon, from  
4 you?

5 MS. SASSOON: No. Thank you, your Honor.

6 THE COURT: From the defense?

7 MS. LENOX: Yes, your Honor. I understand that your  
8 Honor is reserving ruling on the bail argument. I just wanted  
9 to take a moment to address the government's position with  
10 respect to the MCC being set to reopen on September 21st.

11 THE COURT: OK.

12 MS. LENOX: OK. So I understand that that -- the  
13 government has represented that, but until the MCC actually  
14 opens for counsel visits, that date is merely speculative. And  
15 even when the MCC opens for counsel visits, based on our  
16 understanding of what's happening at the MCC right now, the  
17 visits are going to be extraordinarily cabined. They are going  
18 to have to be planned in advance, and we will not have the  
19 ability, as we did in the past, to visit our clients, visit  
20 Mr. Ray in particular, for as long as we need in order to  
21 review discovery and discuss the case. We also won't be able  
22 to visit him every day, even if we had time for that.

23 In addition, we've already lost more than five months  
24 of review of the materials with Mr. Ray and five months where  
25 he has not had access whatsoever to 95 percent of his

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1 discovery.

2 I would also note that Mr. Ray's unit is still on  
3 lockdown. So even if MCC is contemplating reopening on or  
4 about September 21st, as of today, his unit remains on lockdown  
5 and as it has been for the past several weeks, basically all of  
6 August. And that's a report not just from Mr. Ray directly but  
7 was also indicated in the government's papers and is also  
8 something that I've heard from clients that I have in the same  
9 unit as Mr. Ray.

10 And, finally, your Honor, I just want to note that the  
11 Eastern District of New York, the courthouse actually last  
12 night sent out notice that the courthouse was shutting down  
13 until at least September 8th for cleaning because of a COVID  
14 outbreak, a spike of cases in COVID. They are shutting down  
15 for cleaning and for contact tracing.

16 Given that, the cases -- the COVID cases have spiked  
17 500 percent at the MCC since your Honor's last ruling. And  
18 given all of the uncertainty surrounding the coronavirus and  
19 the pandemic, I certainly don't think that we can hang our hats  
20 on the promise that the MCC may reopen for limited counsel  
21 visits on September 21st.

22 THE COURT: That's all very helpful, and it leads me  
23 to the following conclusion. I think I should set two other  
24 deadlines. First, with respect to the modifications of the  
25 protective order that I've laid out, or any open disputes about

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1 the protective order, I think I should get letters from the  
2 parties by a week from today, September 11th, either with an  
3 agreed modification of the protective order along the lines  
4 that I've laid out or with any remaining disputes with respect  
5 to the protective order.

6 Second, I would like to have a brief by -- I am  
7 looking at the calendar. I would like to have a status letter  
8 by three weeks from today, September 25th, from each side that  
9 would address what progress has been made in terms of  
10 dedesignating documents for them to be made available to  
11 Mr. Ray, what progress has been made with respect to the  
12 ability of Mr. Ray to review materials and the defense to be  
13 able to visit Mr. Ray, and the bearing that that information  
14 has on the 3161(h) -- 3161(i) inquiry with respect to bail.

15 MS. LENOX: Thank you, your Honor. This is Marne  
16 Lenox.

17 The only last thing that I would note is that Mr. Ray  
18 has been receiving discovery from the government largely on a  
19 hard drive and then a series of CDs. I understand from  
20 speaking with the government that it is nearly impossible to  
21 print out the entire discovery production, and certainly much  
22 of the discovery cannot be printed on video and audio files.  
23 But I would ask the Court to urge the government, to the extent  
24 possible, to print materials for Mr. Ray's review as opposed to  
25 sending them on CDs or on drives, given that during periods of

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1 lockdown Mr. Ray has effectively no access to a computer on  
2 which to review discovery.

3 THE COURT: I'm not going to be prescriptive like  
4 that, Ms. Lenox, but my observation throughout these  
5 proceedings has been that Ms. Sassoon has made offers in order  
6 to try to facilitate things for the defense. I don't know  
7 whether those are sufficient or not; I'm not going to make a  
8 finding with respect to that.

9 But, Ms. Sassoon, just directing myself to you, I  
10 think you've hopefully heard me loud and clear that the more  
11 you can do to facilitate the preparation of the defense, the  
12 stronger your opposition to bail will be. And so when you  
13 submit the letter on the 25th, if there are other measures that  
14 you've taken in order to make it easier for the defense to  
15 prepare, you'll lay those out. I've noted that in some of the  
16 cases that have been cited to me, the government has put  
17 together books of hot documents, they've highlighted the most  
18 significant documents, and courts put weight on some of those  
19 kinds of things. And you can read those cases as well as I  
20 can. The more you can do to facilitate the preparation of the  
21 defense and to alleviate some of the problems created by COVID,  
22 the better from my perspective.

23 Anything else from you, Ms. Sassoon?

24 MS. SASSOON: No. And understood, your Honor, and  
25 we've already agreed to print out some materials and send them

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1 to the prison. I tried to confirm with the paralegal before  
2 the conference that they've been sent, but we'll certainly  
3 provide that information in our September 25th letter.

4 THE COURT: Terrific.

5 OK. Thank you both. Thank you, Mr. Ray.

6 Everybody, you know, enjoy your weekend and stay safe  
7 and stay healthy. Thank you.

8 THE DEFENDANT: Thank you, your Honor.

9 THE COURT: We are adjourned.

10 THE DEFENDANT: Thank you.

11 MS. SASSOON: Thank you, your Honor.

12 MS. LENOX: Thank you.

13 (Adjourned)  
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